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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SALES TAX REFERENCE NO.47 OF 2009
WITH
SALES TAX REFERENCE NO.48 OF 2009
WITH
SALES TAX REFERENCE NO.49 OF 2009
WITH
SALES TAX REFERENCE NO.34 OF 2009
WITH
SALES TAX REFERENCE NO.1 OF 2012
WITH
SALES TAX REFERENCE NO.7 OF 2012
WITH
SALES TAX REFERENCE NO.10 OF 2012
WITH
SALES TAX REFERENCE NO.11 OF 2012
WITH
SALES TAX REFERENCE NO.12 OF 2012
WITH
SALES TAX REFERENCE NO.14 OF 2012
WITH
SALES TAX REFERENCE NO.23 OF 2012

The Commissioner of Sales Tax,
Maharashtra State, Mumbai.]
]..Applicant.

V/s.

M/s. S.H.Kelkar & Company Ltd.]
Lal Bahadur Shastri Marg, Mulund (West)]
Mumbai - 400 080.]..Respondent.

WITH
SALES TAX REFERENCE NO.11 OF 2006

International Flavours & Fragrances India]
Ltd., formerly known as M/s. Bush Boake]
Allen (I) Ltd. a company incorporated under]
the provisions of the Companies Act, 1956,]
having its registered office at 1-5 Seven]
Wells Street, St. Thomas Mount, Chennai]

600 016 and Regional Sales Office at Floral]
Deck Plaza, 3rd Floor, 'B' Wing, M.I.D.C.,]
Central Road, Andheri East, Mumbai-400063.] ..Applicant.

V/s.

State of Maharashtra through its Secretary]
of Ministry of Finance (Sales Tax Department)]
Mantralaya, Mumbai.] ..Respondent.

WITH
SALES TAX REFERENCE NO.15 OF 2006

Saibaba Industries Ltd., a company]
incorporated under the provisions of the]
Companies Act, 1956, having its registered]
office at 129/131, Kazi Sayed Street Masjid,] ..Applicant.
Mumbai - 400 003.

V/s.

State of Maharashtra through its Secretary]
of Ministry of Finance (Sales Tax Department)]
Mantralaya, Mumbai.] ..Respondent.

WITH
SALES TAX REFERENCE NO.5 OF 2012
WITH
SALES TAX REFERENCE NO.11 OF 2011
WITH
SALES TAX REFERENCE NO.13 OF 2012
WITH
SALES TAX REFERENCE NO.15 OF 2012
WITH
SALES TAX REFERENCE NO.22 OF 2012

The Commissioner of Sales Tax,]
Maharashtra State, 8th floor, Vikrikar]
Bhavan, Mazgaon, Mumbai-400 010.] ..Applicant.

V/s.

M/s. Spac Aromas,]
29/38, Mangaldas Road, Mumbai-400 002.] ..Respondent.

WITH
WRIT PETITION NO.2055 OF 2003

International Flavours & Fragrances India Ltd., formerly known as M/s. Bush Boake Allen (I) Ltd. a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 1-5 Seven Wells Street, St. Thomas Mount, Chennai 600 016 and Regional Sales Office at Floral Deck Plaza, 3rd Floor, 'B' Wing, M.I.D.C., Central Road, Andheri East, Mumbai-400063.]
] ..Petitioner.

V/s.

1. State of Maharashtra through its Secretary of Ministry of Finance (Sales Tax Department) Mantralaya, Mumbai.]
]
2. Maharashtra Sales Tax Tribunal, Vikrikar Bhavan, Mazgaon, Mumbai - 400 010.]
]
3. The Commissioner of Sales Tax, Maharashtra State, Vikrikar Bhavan, Mazgaon, Mumbai - 400 010.]
] ..Respondents.

WITH
WRIT PETITION NO.2056 OF 2003

Saibaba Industries Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 129/131, Kazi Sayed Street Masjid, Mumbai - 400 003.]
] ..Petitioner.

V/s.

1. State of Maharashtra through its Secretary of Ministry of Finance (Sales Tax Department) Mantralaya, Mumbai.]
]
2. Maharashtra Sales Tax Tribunal, Vikrikar Bhavan, Mazgaon, Mumbai - 400 010.]
]
3. The Commissioner of Sales Tax, Maharashtra State, Vikrikar Bhavan, Mazgaon, Mumbai - 400 010.]
] ..Respondents.

Mr.V.A.Sonpal, Special Counsel for the revenue in all matters.

Mr.S.K.Nair, A.G.P. for for revenue in Writ Petition No.2055/013 & 2056/03.

Mr.V.Sridharan, Senior Advocate with Mr.V.P.Patkar, Mr.Rahul Thakar i/b. Khaitan & Jaykar for the Applicant in S.T.R. Nos.11/06 and for the Respondent in S.T.R Nos.47/09 and for the Petitioners in W.P. Nos.2055/03 & 2056/03.

Mr.V.P. Patkar i/b. Khaitan & Jaykar for Applicant in S.T.R No.15/06.

Mr.V.P.Patkar with Mr.Dinesh Patkar and Mr.Dinesh Tambde & Mr.M.M.Vadiya for the assessee in S.T.R. Nos.48/09, 49/09, 1/12, 5/12, 7/12, 10/12, 11/12, 12/12, 13/12, 14/12, 15/12, 22/12, 23/12 & 11/11.

CORAM : S.C.DHARMADHIKARI AND A.K.MENON, JJ.

RESERVED ON : 7TH OCTOBER, 2014

PRONOUNCED ON : 27TH NOVEMBER, 2014

JUDGMENT (PER A.K.MENON, J.)

1. This order disposes of all the above seventeen Sales Tax References and two Writ Petitions. For the purpose of the present judgment, we refer to the facts and issues raised in Sales Tax Reference No.11 of 2006, Writ Petition No.2055 of 2003 and Sales Tax Reference No.49 of 2006. The issues that arise for consideration pertains to additive flavour compounds only and synthetic essential oils, fragrances, etc. Vide order 31st March, 2006, the following questions were

referred to this Court:-

- (i) Whether on the facts and circumstances of the case, was the Tribunal justified in negating the revenue's interpretation of the words "and their compounds" in schedule entry C-I-19 as covering only the compounds of natural and synthetic essential oils as not quite proper and interpreting the words "and their compounds", therein to mean the compounds of the aromatic chemicals as well.
- (ii) Whether on the facts and circumstances of the case, was the Tribunal justified in holding that the impugned product i.e. flavouring compound is compound covered by Schedule Entry C-I-19 and liable to tax @ 4 per cent from 1-1-1988 to 10-8-1988 and 1994-95 ?
- (iii) Whether on the facts and circumstances of the case, was the Tribunal justified in concluding that the impugned product i.e. perfumery compound are compounds or aromatic chemicals within the meaning of Schedule Entry C-I-19 and hence liable to tax @ 4% for the period 1-1-1998 to 31-3-1995 ?

2. For the purpose of this judgment, we refer to the facts in the case of Sales Tax Reference No.47 of 2009. The Respondent- assessee is a manufacturer of

Aromatic Chemicals, Flavouring Compounds, Natural and Synthetic Essential Oil and Fragrances, etc. The assessing authority levied a tax at 15% on the sales of flavouring compounds and perfumery compounds treating them as covered under entry C-II-78, with effect from 11th August, 1988. Perfumery compounds were also taxed under C-II-86 as fragrances and penalties were also levied.

3. According to the Respondent-assessee, sales of flavouring compounds and perfumery compounds were covered under entry C-I-19. The assessee filed a first appeal before the Deputy Commissioner of Sales Tax, who considered the above submissions but rejected them, holding that the assessing officer had not erred in treating the impugned sale as covered in schedule entry C-I-19. The first Appellate Authority thus confirmed the order of the assessing authority with regard to levy of taxes.

4. Being aggrieved by the order of the first appellate authority, the appellant filed a second appeal before the Tribunal. The Appellate Tribunal, after hearing both sides, partly allowed the second appeal

vide order dated 31st March, 2003 and held that during the period 11th August, 1988 to 31st March, 1994, the sale of flavouring compound was liable to be taxed at the rate of 15% being covered under schedule entry C-II-78. After the period 1st January, 1988 to 11th August, 1988 and during 1994-95 flavouring compounds were liable to be taxed at 4% being covered under entry C-I-19. It was further held that perfumery compounds were liable to sales tax at 4% during the period 1st January, 1988 to 31st March, 1995. The claims pertaining to goods returned, set off, sale of REP licence, etc. were remanded to the Deputy Commissioner.

5. Mr. Sridharan, learned Senior Counsel appearing on behalf of the assessee in all these matters submitted that the arguments raised by the revenue before the Maharashtra Sales Tax Tribunal were as follows:-

(a) Entry C-I-19 does not cover compounds of aromatic chemicals but the entry covers only the compounds of natural / synthetic essential oils and no other compounds.

(b) Entry C-I-19 covers only the compounds which are sold as single entity in form which is almost pure.

(c) Entry C-I-19 relates only to compounds treated individually i.e. without requirement of specific formulation. In other words, it does not cover any prepared mixture. On the three questions framed, he submitted that as far as the first question reproduced above, the Tribunal had answered this question in its judgment dated 31st March, 2003 as follows:-

“ The reading of the entry C-I-19 done by the revenue is not quite proper. The words 'their compounds' therein would obviously mean the compounds of the Aromatic Chemicals and Synthetic and Natural Essential Oils. They would certainly not mean compounds merely of synthetic and natural essential oils, as sought to be interpreted by the revenue. When the synthetic and natural oils themselves were covered by C-I-19 there was obviously no need to specify that even the compounds of such oils would also be covered by the same entry. As compounds of various chemicals are covered by the term chemicals, the compounds of the aforesaid oils are also covered by the term 'synthetic and natural essential oils'. In that view of the matter, it is absolutely clear that the words 'their compounds' in C-I-19 means not the compounds of oils but the compounds of aromatic and oils....Therefore, C-I-19 does include mixtures except culinary and flavour essences. ”

6. Mr.Sridharan submitted that ordinarily the use of semicolon in a classification creates a distinction between the terms of inputs before and after the semicolon. He relies upon the decision of the Supreme Court in **Falcon Tyres V/s. State of Karnataka** reported in **(2006) 6 SCC 530** in support of his submission that in the impugned entry C-I-19, no such semicolon is used in the entry and there was no distinction between '*aromatic chemicals*' on the one other and '*natural and synthetic essential oils*' on the hand. Consequently, it is submitted that the words '*and their compounds*' will refer to both, compounds of aromatic chemicals as well as compounds of natural and synthetic essential oils. Mr.Sridharan further submits that in **Union of India V/s. Pesticides Mfg & Formulators Assn. Of India** reported in **(2002) 7 SCC 410**, the Apex Court has held that a compound is mixture of components and therefore, entry at C-I-19 includes mixtures of *aromatic chemicals* and '*natural and synthetic essential oils*'. The impugned products will not fall outside the entry merely on account of being a mixture.

7. As far as the second question is concerned, Mr.Sridharan has submitted that the second question was

relevant only for matters pertaining to M/s. International Flavours and Fragrances. He submitted that the terms in a classification entry must be interpreted using the principle of *noscitur a socis*. Mr.Sridharan relied on the Apex Court in Gordhandas Tokerseey, Pardeep Agarbatti and G.Radhakrishna Murti (supra). He submitted that the principle must be applied even when interpreting an entry containing two or more terms. In this behalf, he relied upon Bennion on Statutory interpretation, 5th Edition at page 1197. Mr.Sridharan further submitted that the terms 'culinary and flavouring' is used only as a composite expression i.e. two words wherein one gives meaning to the other and there is no specific reason as to why the terms are used separately. Mr.Sridharan submitted that this Court in the case of **Commissioner of Sales Tax V/s. Khosla Kesharwala reported in (2006) 145 STC 57 (Bom.)** also indicates that a classification under entry C-II-78 requires the impugned product to predominantly relate to cooking as a colouring and flavouring agent.

8. In effect, Mr.Sridharan submitted that only those products which are in relation to culinary i.e. used in a kitchen which are covered under C-II-78. The impugned product i.e.

flavouring essence is not used directly in a kitchen or in cooking or any other similar manner, but used as raw materials in industries such as pharmaceuticals, confectionery products. He submitted that this aspect has been considered by the Tribunal in its judgment on 31st March, 2006 in paragraphs 7 to 9. For all these reasons, it is submitted that the impugned product does not fall within entry C-II-78 but falls under C-I-19.

9. With reference to the third question, Mr.Sridharan submitted that it is relevant only in the matter of S.H. Kelkar, Respondent in Sales Tax Reference No.47 of 2006 and others. In that case, he submitted that the limited question is whether the impugned product determined as perfumery compound is found to be falling within entry C-I-19 and hence not under entry C-II-86 dealing specifically with perfumes other than those covered under C-I-19. Mr. Sridharan submits that the test of common commercial / trade parlance has to be applied in interpreting schedule entries pertaining to classification, relying upon the judgments of the Supreme Court in **Chemical and Fibres of India Ltd. V/s. Union of India** reported in **(1997) 2 SCC 664** and **Ramavatar**

Budhaiprasad V/s. Asst. Sales Tax Officer, Akola reported in **(1961) 12 STC 286** in support of his contention. He further submitted that the specification and standards prepared by the Bureau of Indian Standards as published have been considered strong indicators of commercial and consumer parlance and glossaries published by the Indian Standards Organization have been relied by Courts in various judgments.

10. In support of his contention, he placed reliance upon the decision of **Chemical and Fibres of India Ltd.(supra), Warden & Co. V/s. CCE, Thane** reported in **(1995 Suppl. 1 SCC 740** and **CCE, Kanpur V/s. Krishna Carbon** reported in **(1989) 1 SCC 150**. He further submitted that as per the Indian Standard Glossary of terms relating to natural and synthetic perfumery material, the term 'perfumery compound' has been specifically defined as a concentrated base which is further diluted and modified to suit various end uses. 'Perfume' has been distinctly defined as a solution of perfumery compound in ethanol or other suitable solvent meant for use as a personal adornment.

11. Mr.Sridharan further submits that there is a

distinction between perfumery compound and perfume which clearly indicates that both terms are to be treated distinctly in commercial or trade parlance, therefore, it is submitted that perfume /fragrance cannot fall within entry relating to perfumes C-II-86, the product will remain classified under C-I-19. Mr.Sridharan and Mr. Patkar further submitted that the entry relating to perfumes under the Bombay Sales Tax Act prior to 1981 (E-I-19) is specifically interpreted in the case of **CST V/s. Gordhandas Tokersey** reported in **(1983) 52 STC 381**, using the principle of *noscitur a sociis* to refer to preparations as are commonly known in market for use on the body as perfumes.

12. This interpretation was referred in **Pandurang Agarbatti V/s. State of Punjab** reported in **[1997] 107 STC 56** and **G.Radhakrishna Murti & Co. & Ors. V/s. CFTO, Vijaywada** reported in **[1999] 113 STC 161 (SC)**. The entry being interpreted in the above mentioned decisions is similar to the entry C-II-86 dealing with perfumes, therefore, what is covered by entry C-II-86 are those goods commonly used directly on the human body. It is an undisputed fact that the impugned products are not used directly on the human

body and are used in various industries for the purpose of respective end products. The revenue itself has accepted that the impugned products were sold to various manufacturers of soaps, cosmetics, agarbattis, etc. The impugned products therefore cannot fall within entry C-II-86.

13. Mr.Sridharan submitted that in G.Radhakrishna (supra), the Apex Court had held that the meaning of the word 'perfume' in modern times has undergone a change, observing that the etymological meaning or the original meaning of 'perfume' may come from the word 'fumare' (smoke), but in modern parlance it has undergone a change. The word 'perfume' originates from the word 'fumare' which means smoke or to emit vapour, These are the meaning given by the Oxford Dictionary. The word 'Perfume' is also considered in Gordhandas Tokersej (supra). In that case, the Court observed that when two or more words which are capable of being understood in an analogous manner are coupled together, they should be understood in the common analogous sense and not in a general sense. By applying this principle the Court held that 'perfume' in C-I-19 referred to such preparation as they are commonly known in the market for

use on the body as perfumes. Mr.Patkar, learned counsel appearing for the Petitioners in the Writ Petitions relied upon the judgment of this Court in Gordhandas Tokersey (supra) and adopted the submissions of Mr.Sridharan.

14. Mr.Sridharan further submits that it is well accepted that in cases of classification, the burden of proof is placed on the revenue which must be discharged in order to sustain an assessment as valid. In this behalf, he relied on the judgment of the Supreme Court in **Hindustan Ferodo Vs. CCE** reported in **1997 (89) ELT 16(SC)** and **Union of India V/s. Garware Nylons** reported in **(1996) 10 SCC 413**. In his view, the revenue has failed to discharge its burden by placing evidence on the basis of which the impugned product can be classified as perfumery compounds under C-II-86.

15. Mr.Sonpal on the other hand supported the impugned order. Mr.Sonpal, learned counsel appearing for the revenue relied upon the decision of this Court in *Bradma of India Limited V/s. State of Maharashtra* reported in [1998] 110 339 and submitted that if there are two entries, one general and the other special, the special entry should be applied for

the purpose of levying tax. The general entry should give way to the special entry. Accordingly, he submits that the impugned order cannot be faulted. Mr.Sonpal, then relied upon the decision of this Court in Gordhandas Tokersey. He has also relied upon the judgment of G. Radhakrishna (supra).

16. Having considered the rival contentions, statutory interpretations we agree with Mr. Sridharan that a composite expression must be construed as a whole and in the words of Bennion, it is incorrect to assume that the whole is necessarily the sum of its parts, because a certain meaning can be collected by taking each word in turn and then combining their several meanings. In this connection, we find that it will be appropriate to refer to dictionary meanings of certain words which will throw light on various terms with which we are now concerned.

17. The definition of the term in the “Indian Standards Glossary of terms relating to natural and synthetic perfumery published by the Bureau of Indian Standard and referred to the definition of aromatic chemicals at item 2.7, essential oil 2.47, essential oil and synthetic 2.48, perfumery compound 2.87. The

aforesaid definitions are reproduced below:-

“ 2.7 Aromatic Chemicals /Aroma Chemicals – Organic chemicals derived by organic synthesis or as isolate from natural essential oils possessing distinct aroma. Used as a raw material of terms, and it may not necessarily include all the legal meaning of the terms.”

“2.47 Essential Oil – It is a volatile perfumery material derived from a single source of vegetable or animal origin by a process, such as hydrodistillation, steam distillation, dry distillation or expression.”

“2.48 – Essential Oil, Synthetic – It is a composition generally consisting of natural essential oils, aromatic chemicals, resinoids, concretes, absolutes, etc., but excluding animal or vegetable non-essential oils and not having volatile residue in excess of 10 percent by mass. It is so composed that it bears a close resemblance primarily in odour to a naturally occurring essential oil.

“ 2.87 Perfumery Compound – A concentrated base which is further diluted with or without toning and further modification to suit various end-uses.”

Entry No. C-I-19 reads as under;

19. Aromatic Chemicals and 4% 4% 1-7-1981

	natural and synthetic oils and their compounds			31-3-1984
19.	Aromatic chemicals and their residue and natural and synthetic essential oils and their compounds	4%	4%	1-4-1984 to 10-8-1988
19.	Aromatic chemicals and their residue and natural and synthetic essential oils and their compounds (except the culinary and flavouring essences covered by entry 78 of Part II of this Schedule)	4%	4%	1-8-1988 to 30-4-1992
19.	Aromatic chemicals and their residue and natural and synthetic essential oils and their compounds except the perfumes and culinary and flavouring essences whether in a concentrated or diluted form.	4%	4%	1-5-1992 to 8-9-1992
19.	Aromatic chemicals and their residue and natural and synthetic essential oils and their compounds (except the culinary and flavouring essences covered by entry 78 of Part II of this Schedule)	4%	4%	9-9-1992 to 31-3-1994
19.	(1) Raw materials for preparation of perfumes, fragrances and flavors, that is to say- (a) Natural and synthetic oils and their compounds (b) Fragrance and flavour chemicals.	4%	4%	1-4-1994 to 30-9-1995
	(2) Industrial flavours and fragrances in	4%	4%	1-4-1994 to 30-9-1995

concentrated form.

18. A bare reading of the entry reveals that Aromatic chemicals and their compounds are not intended to be treated separately from natural and synthetic essential oils. In our view, the use of the conjunction “and” with the word “and their compounds” is intended to apply to the compounds of natural synthetic oil and also compounds of aromatic chemicals and natural and synthetic oils. It will also be seen from the fact that wherever it was intended that the product or derivative chemicals were to be grouped to create a distinct category, specific language has been used.

19. For instance for the period 1-1-1984 to 10-8-1988 apropos “Raw Materials”, aromatic chemicals and their residues on one hand and Natural and Synthetic oils and their compounds on the other, the words “*and their compounds*” does not apply to aromatic chemicals and their residues. For the period 11-8-1988 to 30-4-1992 a further modification is shown by way of exclusion from C-I-19, of culinary and flavour essences covered by entry 78 of Part II. For the period 1-5-1992 to 8-9-1992, the perfumes and culinary and flavouring

essences whether in a concentrated or diluted form have been excluded. For the period 9-9-1992 to 31-3-1994, the product described in the entry is identical to that for the period 11-8-1988 to 30-4-1992. For the period 1-4-1994 to 30-9-1995 further change is made in the system which distinguishes perfumes, fragrance and flavour. The natural and synthetic oil and their compounds and fragrance and flavouring chemicals.

20. Thus although in the case of Raw materials it is seen that the expression “and their compounds is applicable only to the natural and synthetic essential oils but not applicable to fragrance and flavour chemicals or industrial flavours and fragrance in concentrated form. A perusal of the definition of Aromatic Chemicals, Essential Oil and Essential Oil, Synthetic referred in 2.7, 2.47 and 2.48 below reveals that they can be combined with each other. For example Essential Oil Synthetic is shown as a composition of natural essential oils and aromatic chemicals etc. The Tribunal was justified in negating the revenue's interpretation of the word “and their compounds” in schedule entry C-I-19 covers only the compounds of natural and synthetic oil and essential

oils, to the exclusion of aromatic chemicals.

21. We are also of the view that the perfumery compounds are compounds of aromatic chemicals within the meaning of entry C-I-19 and in view thereof, we hold that the perfume is covered under C-II-86, which is reproduced below:-

86. Perfumes(excluding those covered by entry 19 of Part I of this Scheduled) depilatories, cosmetics, toilet articles and preparations whether medicated or otherwise (including hair creams, hair-tonic and liquid shampoo) but excluding those covered by any other entry of this or any other schedule.	15% 15% 1-7-1981 to 31-3-1989
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22. In conclusion, we answer the three questions in the affirmative, namely in favour of the assessee and against the revenue. The References are disposed of accordingly. In view thereof Writ Petitions are also disposed off. Rule discharged therein. No order as to costs.

(A.K.MENON, J.)

(S.C.DHARMADHIKARI, J.)

23. After the judgment was pronounced, the parties informed us that the Petitioners in two Petitions namely Writ Petition No.2055 of 2003 and Writ Petition No.2056 of 2003 have furnished bank guarantees pursuant to the interim orders of this Court. Since the issues raised in the Writ Petitions were subsequently considered as subject matter of Sales Tax References, the Writ Petitions moved do not survive and disposed of in this manner. In such circumstances, the request made by the Petitioners for discharging the bank guarantees is accepted. The bank guarantees to stand discharged.

(A.K.MENON, J.)

(S.C.DHARMADHIKARI, J.)